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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2011-0834; FRL-9907-57-Region 8]**

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year PM<sub>10</sub> Maintenance Plan for Pagosa Springs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Pagosa Springs area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>). The State adopted the revised maintenance plan on November 19, 2009. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the PM<sub>10</sub> standard for a second 10-year period beyond the area's original redesignation to attainment for the PM<sub>10</sub> NAAQS. EPA is taking final action approving the revised maintenance plan with the exception of one aspect of the plan's contingency measures. EPA's approval includes the revised maintenance plan's 2021 transportation conformity motor vehicle emissions budget (MVEB) for PM<sub>10</sub>. In taking final action to approve the revised maintenance plan, we are taking final action to exclude from use in determining whether or not Pagosa Springs continues to attain the 24-hour PM<sub>10</sub> NAAQS, exceedances of the 24-hour PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on March 22, 2009, April 3,

2009, April 5, 2010, April 28, 2010, April 29, 2010, May 11, 2010, and May 22, 2010 because the exceedances meet the criteria for exceptional events caused by high wind natural events.

This action is being taken under sections 110 and 175A of the CAA.

**DATES:** This final rule is effective [**Insert date 30 days after publication in the Federal Register**].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2011-0834. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website.

Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program,

Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado

80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR**

**FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You

may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding

Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kyle Olson, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver,

Colorado 80202-1129, (303) 312-6002, [olson.kyle@epa.gov](mailto:olson.kyle@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- i. The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- ii. The words Colorado and State mean or refer to the State of Colorado.
- iii. The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- iv. The initials MVEB mean or refer to motor vehicle emissions budget.
- v. The initials NAAQS mean or refer to National Ambient Air Quality Standard.
- vi. The initials NPR mean or refer to notice of proposed rulemaking.
- vii. The initials PM<sub>10</sub> mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- viii. The initials SIP mean or refer to State Implementation Plan.

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#### **I. Background**

On December 27, 2013, we published a notice of proposed rulemaking (NPR) in which we proposed to partially approve and partially disapprove the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan that Colorado submitted to us on March 31, 2010. (See 78 FR 78797.) We proposed to approve the revised maintenance plan, with the exception of one of its listed contingency measures, because it demonstrates maintenance through 2021 as required by CAA

section 175A(b), retains the control measures from the initial PM<sub>10</sub> maintenance plan that EPA approved in June of 2001, and meets other CAA requirements for a section 175A maintenance plan. We proposed to disapprove “voluntary coal and/or wood burning curtailment” as a potential contingency measure in section 5.F.3 of the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan. While we have not required that potential contingency measures be effective without further action by the state, we interpret the CAA as requiring measures that will be enforceable. Voluntary measures may not be widely implemented and, thus, cannot be relied on to ensure prompt emission reductions to correct a violation. We also proposed to exclude from use in determining whether or not Pagosa Springs continues to attain the 24-hour PM<sub>10</sub> NAAQS exceedances of the 24-hour PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on March 22, 2009, April 3, 2009, April 5, 2010, April 28, 2010, April 29, 2010, May 11, 2010, and May 22, 2010 because they meet the criteria for exceptional events caused by high wind natural events. In addition, we proposed to approve the revised maintenance plan’s 2021 transportation conformity MVEB for PM<sub>10</sub> of 946 lbs/day.

We received no comments regarding our proposed actions and are finalizing those actions as proposed. For further details regarding the bases for our actions, please see our NPR at 78 FR 78797 (December 27, 2013).

## **II. Final Action**

We are approving the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan that was submitted to us on March 31, 2010, with one exception. We are disapproving “voluntary coal and/or wood burning curtailment” as a potential contingency measure in section 5.F.3 of the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan. We are approving the remainder of the revised maintenance

plan because it demonstrates maintenance through 2021 as required by CAA section 175A(b), retains the control measures from the initial PM<sub>10</sub> maintenance plan that EPA approved on June 15, 2001, and meets other CAA requirements for a section 175A maintenance plan. We are excluding from use in determining that Pagosa Springs continues to attain the 24-hour PM<sub>10</sub> NAAQS exceedances of the 24-hour PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on March 22, 2009, April 3, 2009, April 5, 2010, April 28, 2010, April 29, 2010, May 11, 2010, and May 22, 2010 because they meet the criteria for exceptional events caused by high wind natural events. We are also approving the revised maintenance plan's 2021 transportation conformity MVEB for PM<sub>10</sub> of 946 lbs/day.<sup>1</sup>

### **III. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 USC 7410(k), 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);

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<sup>1</sup> As noted in our NPR, the 2012 PM<sub>10</sub> MVEB of 7,486 lbs/day from the original PM<sub>10</sub> maintenance plan must continue to be used for analysis years 2012 through 2020 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2012 PM<sub>10</sub> MVEB and EPA approves the SIP revision. 78 FR 78801-78802.

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business

Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 20, 2014

Shaun L. McGrath  
Regional Administrator  
Region 8



40 CFR part 52 is amended to read as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G – Colorado

2. Section 52.332 is amended by adding paragraph (t) to read as follows:

§52.332 Control strategy: Particulate matter.

\* \* \* \* \*

(t) Revisions to the Colorado State Implementation Plan, Final Revised PM10 Maintenance Plan for the Pagosa Springs Attainment/Maintenance Area, as adopted by the Colorado Air Quality Control Commission on November 19, 2009, and submitted by the Governor's designee on March 31, 2010. The revised maintenance plan satisfies all applicable requirements of the Clean Air Act.

**[FR Doc. 2014-05009 Filed 03/07/2014 at 8:45 am; Publication Date: 03/10/2014]**